

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petition of GCB Communications, Inc. d/b/a Pacific)	WC Docket No. 11-141
Communications and Lake Country)	
Communications, Inc. for Declaratory Ruling)	

To: The Commission

**REPLY OF THE AMERICAN PREPAID PHONECALL
ASSOCIATION**

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The American PrePaid Phonecall Association (“APPPA”) submits this reply to the opposition¹ to U.S. South’s Application for Review² of the Wireline Competition Bureau’s (“Bureau’s”) misguided *GCB Order*.³ For the reasons discussed below, the *GCB Order* is inconsistent with the Commission’s obligation to “promote the widespread deployment of payphone services to the benefit of the general public”⁴ and is also is legally incorrect. The Commission should reverse it.

¹ Joint Comments of the American Public Communications Council, APCC Services, Inc., and Petitioners GCB Communications, Inc., d/b/a Pacific Communications and Lake Country Communications, Inc., in Opposition to Application for Review Filed by U.S. South, WC Docket No. 11-141 (filed Aug. 31, 2012) (the “Opposition”).

² Application of U.S. South for Full Commission Review, WC Docket No. 11-141 (filed July 30, 2012) (the “Application for Review”).

³ *Petition of GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications, Inc. for Declaratory Ruling*, WC Docket No. 11-141, Declaratory Ruling, 27 FCC Rcd 7361 (2012) (“*GCB Order*”).

⁴ 47 U.S.C. § 276(b)(1).

APPPA was founded January 12, 2012, and its members control over half of the prepaid long distance calling market (including prepaid calling cards and similar, next-generation prepaid long distance products) in the United States (“Prepaid Service Providers”).⁵ Its mission is to promote high value prepaid telephone services to consumers; protect the industry’s interests, good name and the public trust; promote best practices; and provide a unified industry voice. Because Prepaid Service Providers generally are “Completing Carriers” required to compensate payphone service providers (“PSPs”) for payphone-originated coinless calls, APPPA’s members have a strong interest in this proceeding.

I. THE *GCB ORDER* IS INCONSISTENT WITH THE COMMISSION’S DUTY TO PROMOTE PAYPHONE DEPLOYMENT TO BENEFIT THE PUBLIC

The prepaid long distance industry – much like the payphone industry – today primarily serves vulnerable populations – especially low-income populations seeking affordable ways to call their loved ones abroad, and consumers who do not subscribe to local landline or wireless service and therefore lack access to the domestic long distance service generally bundled with it.

Because they serve many of the same consumers, the two industries have a mutual interest in working together, but the *GCB Order* undermined their ability to do so. Prepaid Service Providers bill their customers in real time (by debiting value from a prepaid card or other calling product); thus, they must know in real time whether a call originates from a payphone in order to do so.

The *GCB Order*, however, eliminated the commonly accepted means for identifying compensable payphone-originated calls – payphone-specific coding digits. As a result of the *GCB Order*, PSPs may present – and are presenting – compensation claims to Prepaid Service Providers for calls that the PSP’s local exchange carrier (“LEC”) delivered without payphone-

⁵ For more information about APPPA, visit www.apppa.us.

specific coding digits. Prepaid Service Providers are left with 3 options, (1) attempt to negotiate multiple alternative compensation arrangements (“ACAs”) with a multitude of PSPs;⁶ (2) change their software at their cost to support a system based on automatic number identification (“ANI”) in the signaling stream;⁷ or (3) block payphones altogether. Ultimately, the Prepaid Service Providers must have predictable cost and provide a valuable access solution to the end consumer.

It is unsustainable to expect Prepaid Service Providers to take a loss on calls that are transmitted without payphone-specific coding digits, even if it happens infrequently. The margins on long distance service are razor-thin. This is true even in the market for international long distance service, where prices are relatively high, because the cost of terminating a long distance call in many countries includes inflated access and regulatory charges imposed by national carriers and regulators. Thus, even where a long distance provider may charge a relatively high price for long distance calls to a given country, the long distance provider’s margin will still be a small fraction of a cent per minute. As a result, if payphone providers present compensation claims after the fact for even a small number of calls, the prepaid long distance provider will lose money. Additionally, trying to pass the cost on to all of the consumers to overcome this issue will only exacerbate the already high cost of payphone access. The retail price of payphone access already is over \$1.00 to cover the distribution cost of these services.

Consumer payphone fees simply cannot be increased any further without eroding the value to the

⁶ One large APPPA member pays compensation to approximately 75 different PSP entities each month, *in addition to* its payment to the large American Public Communications Council (“APCC”) umbrella group. Prepaid Service Providers are small entities and lack the resources to negotiate this many individual ACAs.

⁷ This process may be complicated in some cases if providers lack access to the source code for legacy systems.

consumer beyond what is reasonable – particularly since most prepaid cards in the retail market today are sold at the \$2.00 price point.

Under these circumstances, the *GCB Order* leaves Prepaid Service Providers no choice but to consider blocking all traffic from payphones.⁸ This outcome is fundamentally inconsistent with the Commission’s duty to “promote the widespread deployment of payphone services to the benefit of the general public.”⁹ Widespread blocking of payphone calls by prepaid card providers and other providers of prepaid long distance service will leave payphone providers with few potential customers. This will worsen the already grim financial outlook for the struggling payphone industry, and mean fewer payphones for consumers to use.

More significantly, however, this outcome will harm the “general public” – specifically, the marginalized consumers that make up the core customer base of both industries. Immigrants seeking to call family members in their home countries will find that the prepaid calling cards on which they depend for affordable long distance rates no longer work from the payphone in their neighborhood. Seasonal laborers will be unable to call their loved ones from the payphones near their workplaces. These outcomes will harm carriers and consumers alike.

This is not just a theoretical concern. In the wake of the *GCB Order*, some APPPA members already have received compensation claims for large numbers of allegedly payphone-

⁸ The Commission specifically permits Completing Carriers to block payphone-originated calls. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2572 ¶ 60 n.103; 2575 ¶ 67 (1999) (encouraging “IXCs to develop targeted call blocking,” defined as “the technological ability of an IXC to not accept (or ‘block’) a dial-around access call from one payphone while accepting calls from another payphone,” and finding that “[t]argeted call blocking is an essential element to an IXC’s ability to negotiate with PSPs in a true market setting”). *See also GCB Order*, 27 FCC Rcd at 7379 ¶ 37.

⁹ 47 U.S.C. § 276(b)(1).

originated calls that were delivered without coding digits. These payphone operators have shown no willingness to negotiate towards a viable solution to allow Prepaid Service Providers to offer their customers a valuable product that is economically viable. As a result, these APPPA members already have begun blocking prepaid calling from nearly 8,000 payphones¹⁰ – and less than three months have elapsed since the *GCB Order* was released. In the absence of a clear regulatory solution, additional blocking is likely as time goes by.

A clear going-forward regulatory solution is needed because both the payphone industry and the prepaid calling industry are characterized by large numbers of small companies operating on thin margins and lacking good access to information. In a more concentrated segment of the communications sector, the market might be able to find a solution. For example, APCC payphone providers and APPPA Prepaid Service Providers might work together to develop an alternative ACA method to identify and compensate for payphone-originated calls. This is only a partial solution, however, given the large number of small players that characterize both the payphone industry and the prepaid long distance industry. Neither side is cohesive enough to formulate a common position, and neither industry possesses the resources to develop a new technological solution. The *GCB Order* was an abdication of a necessary role for a regulator, and the Commission must overturn it.

Even within the context of the Flex-ANI system, if the Commission wishes to create a productive environment in which PSPs and Completing Carriers can work together to identify solutions to instances where payphone-specific coding digits are not delivered, the *GCB Order* was exactly the wrong conclusion. By imposing strict liability on Completing Carriers, the order

¹⁰ APCC estimates that only about 400,000 payphones remain in the U.S. Petition for Partial Reconsideration of American Public Communications Council, Inc., WC Docket No. 11-42 (filed March 28, 2012) at 6.

eliminates any incentive on the part of PSPs to cooperate, because PSPs simply can present compensation claims months or years later, whether or not coding digits were delivered. As noted above, APPPA members already have seen the emergence of PSP groups that seem intent on pursuing this approach, and refusing to negotiate towards an economically workable solution.

In short, although the *GCB Order* was facially a victory for payphone providers, it ultimately may bring them profound harm – and even greater harm to the most vulnerable of consumers. To “promote the widespread deployment of payphone service to the benefit of the general public,”¹¹ the Commission must overturn the *GCB Order* and allow Completing Carriers to rely on payphone-specific coding digits to identify compensable payphone calls until a more even handed and cohesive method is identified and mandated to be implemented in the future.

II. THE *GCB ORDER* IS LEGALLY INCORRECT

The *GCB Order* concludes that “a Completing Carrier must pay compensation for each completed call regardless of whether the Completing Carrier received payphone-specific coding digits.”¹² This conclusion is patently inconsistent with the payphone compensation regime that the Commission has established.

The history of the Commission’s payphone compensation proceeding has been long and tortured, but it can be boiled down to the following succinct summary:

- The Commission mandated per-payphone compensation until the industry could develop a technological means for identifying payphone-originated long distance calls.¹³

¹¹ 47 U.S.C. § 276(b)(1).

¹² *GCB Order*, 27 FCC Rcd at 7379 ¶ 38.

¹³ *Id.* at 7363-64 ¶ 5.

- Under the Commission’s auspices, the industry collectively developed the system of payphone-specific coding digits to identify individual payphone-originated calls in the signaling stream.¹⁴
- The Commission required LECs to deploy the capability for transmitting payphone-specific coding digits.¹⁵
- The Commission required Completing Carriers to compensate PSPs for completed calls.¹⁶

The *GCB Order* effectively concludes that, although the Commission sanctioned the development of payphone-specific coding digits, and required LECs to deploy the capability of transmitting such digits, the Commission never specifically held that Completing Carriers could rely on payphone-specific coding digits to identify compensable calls.¹⁷ To reach this conclusion, the Bureau focuses on the Commission’s prior conclusion that “‘the availability of payphone-specific coding digits was never a *sin[e] qua non* for the payment of payphone compensation.’”¹⁸ The Bureau fails to note, however, that the Commission made this statement (and other similar statements cited by the Bureau¹⁹) *before Flex-ANI technology had been deployed*. As a result, the Bureau’s use of the statements is entirely out of context: Given the Section 276 mandate that PSPs receive compensation, the Commission could not possibly have

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* There also was extensive debate about the amount of compensation and the identity of the carrier that would be responsible for paying compensation, which is irrelevant to the question of how compensable payphone calls are identified.

¹⁷ *Id.* at 7371 ¶ 19.

¹⁸ *Id.* at 7373 ¶ 23, quoting *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd 4998, 5031 ¶ 64 (1998).

¹⁹ *Id.* at 7372-73 ¶¶ 23-24.

found Flex-ANI digits to be the *sine qua non* for the payment of compensation *before the technology was available*.²⁰ Thus, the Commission’s requirements that PSPs receive compensation in the absence of Flex-ANI *at that time* proves nothing about Completing Carriers’ ability to rely on the delivery of Flex-ANI digits *now*, following the deployment of Flex-ANI technology pursuant to Commission mandate.

The Bureau also relies on the fact that the Commission never clearly articulated a “duty” on the party of PSPs “to transmit the coding digits themselves or to ensure that the LEC transmitted the coding digits.”²¹ This conclusion, however, simply ignores the entire context of the proceeding, in which the Commission mandated the deployment of Flex-ANI technology, then mandated the payment of per-call compensation based on the availability of Flex-ANI to signal compensable calls once that technology had been deployed.

The Bureau is also incorrect that the audit and certification requirements in the Commission’s payphone compensation rules support imposing strict liability on Completing Carriers for paying compensation on calls that arrive without coding digits.²² Under the current regime, such audits historically have verified whether Completing Carriers were paying compensation accurately based on the coding digits received. There is, in fact, no way that an audit of the Completing Carrier’s systems and processes could identify situations where payphone calls do not include Flex-ANI digits, because such situations by definition would arise earlier in the call chain. And the officer certification that the Completing Carrier is paying

²⁰ For this reason, the Ninth Circuit actually read the passage in precisely the correct context; it was the Bureau that read it out of context. *See id.* at 7372 ¶ 21.

²¹ *Id.* at 7372 ¶ 23.

²² *Id.* at 7377 ¶ 32.

compensation “based on 100% of all completed calls”²³ only ever can be as good as the underlying call tracking system – an officer cannot certify that the company is paying compensation for payphone calls of which she is not aware.

As U.S. South correctly points out, PSPs – and not Completing Carriers – have relationships under contract or tariff with the LECs that must transmit Flex-ANI digits in the first instance.²⁴ PSPs are purchasing local service from the LEC to connect their payphones to the network, and must purchase payphone-line service to request that the LEC generate coding digits for the line. By contrast, switch-based resellers are always at least one carrier removed from the LEC in the call path (and often more), and have no relationship with the LEC under contract or tariff. As U.S. South also observes, the PSP has a built-in mechanism for identifying problems with the delivery of coding digits – the sudden cessation of compensation payments – while Completing Carriers have no way to know when coding digits are not being delivered from a given payphone.²⁵

In sum, although it is true that the “Commission’s rules unambiguously place the burden and duty on the Completing Carrier to compensate the PSP for each completed call,”²⁶ the Commission mandated Flex-ANI technology so that Completing Carriers would have a reliable mechanism to do so. There is no basis to conclude that Completing Carriers may not rely on Flex-ANI for this purpose.

²³ 47 C.F.R. § 64.1310(a)(3).

²⁴ Application for Review at 18.

²⁵ *Id.* at 17-18.

²⁶ *GCB Order* at 7376 ¶ 30.

Conclusion

In the *GCB Order*, the Bureau purported to “provide guidance” on the state of the law regarding payphone compensation,²⁷ but in fact the order is dangerously misguided revisionist history. Its conclusions will harm PSP, undermine payphone deployment, and – most importantly – harm vulnerable low-income and immigrant populations that most often use payphones and prepaid calling cards. To reach this bad policy conclusion, the Bureau incorrectly interpreted the Commission’s payphone precedent, deliberately blinding itself to the significance of the Commission’s approval of Flex-ANI digits to signal compensable payphone calls. The Commission should reverse the *GCB Order* and clarify that Completing Carriers may rely on payphone-specific coding digits to identify compensable calls and then work to implement a viable solution going forward.

Respectfully submitted,

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²⁷ *Id.* at 7370 ¶ 18.

Certificate of Service

I hereby certify that, on September 24, 2012, I served the foregoing Reply of the American PrePaid Phonecall Association by electronic mail as follows:

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